

No. 15841

United States
Court of Appeals
For the Ninth Circuit

JOGINDAR SINGH CLAIR,

Appellant,

vs.

BRUCE G. BARBER, as District Director of Im-
migration and Naturalization Service, San
Francisco District,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED
JAN 31 1958
PAUL P. SHEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

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United States Attorney;

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San Francisco, California,
Counsel for Appellee.

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625 Market Street,
San Francisco, California,

MESSRS. PHELAN AND SIMMONS,
ARTHUR J. PHELAN, ESQ.,
1210 Mills Tower,
San Francisco, California,
Counsel for Appellant.



In the United States District Court for the Northern
District of California, Southern Division

No. 36388-Civil

JOGINDAR SINGH CLAIR,

Plaintiff,

vs.

BRUCE G. BARBER as District Director of Im-
migration and Naturalization Service, San
Francisco District,

Defendant.

EXCERPT FROM DOCKET ENTRIES

1957

Apr. 25—Filed complaint—Issued summons.

* * *

May 12—Filed answer of deft.

Aug. 20—Filed notice & motion by deft. to submit
case on administrative record, Aug. 26,
1957.

Aug. 26—Ord. motion to submit case on adminis-
trative record cont'd. to Aug. 30, 1957.

Aug. 30—Ord. case cont'd. to Sept. 20, 1957, for
subm.

* * *

Sept. 20—Ord. case submitted on administrative
record.

* * *

Oct. 28—Filed memo. order for judgment for deft.
Counsel to present findings, conclusions
and judgment.

* * *

1957

Nov. 29—Filed findings & conclusions.

Nov. 29—Entered judgment—filed Nov. 29, 1957—
plaintiff entitled to no relief and com-
plaint dismissed. Deft. to recover \$20.00
costs.

Nov. 29—Mailed notices.

Dec. 10—Filed notice of appeal.

Dec. 10—Filed appeal bond in sum of \$250.00.

Dec. 11—Mailed notices.

Dec. 20—Filed appellant's designation of record
on appeal.

—

In the United States District Court for the North-
ern District of California, Southern Division

No. 36388

JOGINDAR SINGH CLAIR,

Plaintiff,

vs.

BRUCE G. BARBER as District Director of Im-
migration and Naturalization Service, San
Francisco District,

Defendant.

COMPLAINT

I.

This action arises under Section 10 of the Admin-
istrative Procedure Act (5 U.S.C. 1009) and under
the Declaratory Judgment Act (28 U.S.C. 2201), as
hereinafter more fully appears.

II.

Plaintiff is a citizen of India and has resided continuously in the United States for more than sixteen years, to wit: Since the 27th day of August, 1940, on which date, plaintiff arrived in the United States as a seaman aboard the steamship "Grant," a vessel of British registry.

III.

At all times during the proceedings hereinafter mentioned, Defendant Bruce G. Barber was the duly appointed and acting District Director of the Immigration and Naturalization Service of the United States Department of Justice, and was in charge of the San Francisco District of said service.

IV.

Defendant has instituted a deportation proceeding against plaintiff by the issuance of a warrant of arrest in said proceeding, and pursuant to said warrant of arrest, a purported hearing was held in said deportation proceeding by Special Inquiry Officer, Robert S. DeMoulin, and during said hearing, plaintiff filed an application for suspension of deportation under the provisions of Section 244 (a) (1) of the Immigration and Nationality Act of 1952 (8 U.S.C. Section 1254 (a) (1)).

V.

There is annexed hereto, marked "Exhibit A," and made a part hereof, a true copy of the decision and order of said Special Inquiry Officer, entered

on December 14, 1955, denying plaintiff's said application for suspension of deportation and directing that plaintiff be deported if plaintiff failed to depart from the United States.

VI.

Following the entering of said order, plaintiff duly appealed from said order to the Board of Immigration Appeals at Washington, D. C., and there is annexed hereto, marked "Exhibit B," and made a part hereof, a true copy of the decision of said Board of Immigration Appeals, entered on January 20, 1956, directing that plaintiff's appeal be dismissed.

VII.

As will more fully appear from the said exhibits, the Board of Immigration Appeals has found that plaintiff came into the United States on an allied merchant vessel during the war, left his ship, and did not engage in seaman service during the remainder of hostilities, and has denied plaintiff's application for suspension of deportation on the sole basis of these facts so found, as aforesaid.

VIII.

By reason of the premises, plaintiff has been denied a fair hearing of his application for suspension of deportation and has been denied due process of law in said denial of his said application, and said decisions of said Special Inquiry Officer and said Board of Immigration Appeals are contrary to law and in excess of the statutory jurisdiction and authority of said Special Inquiry Officer

and said Board in the following particulars, to wit :

(1) The ground stated by said Board for denial of plaintiff's application for suspension of deportation is insufficient as a matter of law in that said ground so alleged bears no relationship to the statutory requirements for the granting of suspension of deportation ;

(2) The said finding of the Board of Immigration Appeals that plaintiff came to the United States on an allied merchant vessel during the war is unsupported by substantial evidence, or any evidence, and is contrary to the evidence, in that plaintiff came to the United States more than one year before the United States entered the war and before the United States had any allies in said war ;

(3) Said action of said Board in denying plaintiff's application for suspension of deportation on the basis of said findings and conclusions as found in said exhibits is arbitrary, capricious, and an abuse of discretion, and not in accordance with law, in that said action is based upon an arbitrary and unreasonable classification by discriminating against plaintiff on the sole ground that he arrived in the United States on a vessel of British registry, rather than upon a vessel of some other nation ;

(4) Said action of said Special Inquiry Officer and said Board is in excess of their statutory jurisdiction, authority, and limitations in that said Special Inquiry Officer and said Board prescribed a standard and requirement for granting suspension

of deportation which is not sanctioned by the applicable statutory provisions and which is unwarranted by the facts.

IX.

Plaintiff has exhausted his administrative remedies and defendant now threatens to deport plaintiff from the United States in accordance with the aforesaid decisions of the said Special Inquiry Officer and said Board of Immigration Appeals.

Wherefore, plaintiff prays that judgment be entered in his behalf, setting aside the said order of deportation and the findings and conclusions of said Special Inquiry Officer and said Board of Immigration Appeals and declaring plaintiff's right to have said application for suspension of deportation determined without reference to the fact that he arrived in the United States aboard a vessel of British registry, and for such other and further relief as may be deemed by the Court to be just and proper.

/s/ ROBERT B. McMILLAN,
PHELAN & SIMMONS,

By /s/ ARTHUR J. PHELAN,
Attorneys for Plaintiff.

EXHIBIT A

United States Department of Justice
Immigration and Naturalization Service

September 21, 1955.

December 13, 1955.

File: A5 468 333, San Francisco.

In Re: Jogindar Singh Clair a/k/a Hasin Brams.

In Deportation Proceedings

in Behalf of Respondent:

Boyd H. Reynolds, Attorney at Law,
1014-8th Street,
Sacramento, California.

Charges:

Warrant: I & N Act—Entered without inspection.

Lodged: I & N Act—Act of 1924—No immigration visa.

Application: Suspension of deportation.

Detention Status: Released on bond.

Warrant of Arrest Served: February 1, 1955.

Discussion:

This record relates to a 36-year-old married male, a native and citizen of India who last entered the United States at the Port of Norfolk, Virginia, August 27, 1940, as a member of the crew of the SS "Grant," at which time he claims to have been ad-

mitted as a seaman. The respondent testified that it was his intention to desert his vessel upon arrival and that he came to the United States to work and to reside permanently although he did not have an immigration visa. On the basis of this evidence the respondent is found to be subject to deportation on the lodged charge which will be fully sustained.

The warrant of arrest in this case, containing the entered without inspection charge, was issued on the basis of a sworn statement made before an Immigration Officer at Stockton, California, March 12, 1948, wherein he claimed that his last entry was ten miles east of Calexico, California, June 26, 1924, without inspection. During the course of his hearing, the respondent admitted that that information was false and was given to the Immigration Officer in an effort to prevent the issuance of a warrant of arrest and to prevent deportation. The warrant charge cannot be sustained on the basis of the respondent's testimony at time of hearing.

The respondent has submitted an application for suspension of deportation under Section 244 of the Immigration Act of 1952. He is married but his wife and one son reside in India. He alleges that he has been sending between \$100 and \$200 per year for their support. He is employed as a farm laborer and crew foreman, earning \$60 per week. His assets consist of \$500 in cash savings and personal property valued at \$1,000. In addition the respondent is his own bondsman and has placed a \$1,000 Treasury Bond as collateral. A check of local and federal rec-

ords has failed to disclose that the respondent has any criminal record or that he is a member of any subversive groups or organizations. He has submitted affidavits and testimonials indicating that he is, and has been, a person of good moral character for more than the past 5 years. It is to be noted that the false testimony which he gave before an Immigration Officer at Stockton on March 12, 1948, is outside the statutory period during which the respondent is required to show that he has been a person of good moral character. Although the respondent's arrival in the United States on the vessel claimed has not been verified, that apparently is because the respondent is uncertain as to the actual name of the ship on which he arrived. In any event, he testified that the vessel did arrive at Norfolk, Virginia, on the date claimed, August 27, 1940, and that it was a British Flag Ship. It is to be noted that the respondent deserted an allied ship during a period when the United States was endeavoring to aid Great Britain during World War II and when every available seaman was sorely needed. The respondent has no close relatives in the United States. Furthermore, he has presented no evidence which would show that deportation in his case would result in exceptional or extremely unusual hardship to anyone. On the basis of the evidence, it is concluded that the respondent is not eligible for suspension of deportation. His application must be therefore and hereby is denied. It is found that the respondent is statutorily eligible for the privilege of voluntary departure. It is not known whether or not the respondent

will accept voluntary departure or is willing to depart voluntarily at his own expense. However, it is believed that he should be given an opportunity to do so and voluntary departure will therefore be authorized.

The respondent testified that he was properly registered under the Alien Registration Act and also that he registered for military service in the United States in 1941. However, no evidence was presented and it is not known at what local board the respondent was registered. He has indicated that in the event of deportation, he would desire to be returned to India. In this connection, it is noted that the record discloses that the respondent is of the Hindu Faith.

Findings of Fact

Upon the basis of all the evidence presented, it is found:

(1) That the respondent is an alien, a native and citizen of India;

(2) That the respondent last entered the United States at the Port of Norfolk, Virginia, on or about August 27, 1940, as a member of the crew of a vessel named as the SS "Grant";

(3) That at the time of entry, it was the respondent's intention to work and reside in the United States permanently;

(4) That the respondent did not have in his possession an immigration visa.

Conclusions of Law

Upon the basis of the foregoing findings of facts, it is concluded:

(1) That under Section 241(a)(2) of the Immigration and Nationality Act, the respondent is not subject to deportation on the ground that, he entered the United States without inspection;

(2) That under Section 241(a)(1) of the Immigration and Nationality Act, the respondent is subject to deportation on the ground that, at the time of entry, he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit: An immigrant not in possession of a valid immigration visa, in violation of Section 13(a) of the Act of May 26, 1924, and not exempt from the presentation thereof by the said act or regulations made thereunder.

Order: It is ordered that the respondent be granted voluntary departure at his own expense in lieu of deportation within such period of time or authorized extensions thereof and under such conditions as the District Director or the Officer in Charge having administrative jurisdiction of the office in which the case is pending shall direct.

It is further ordered that if the respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the respondent

deported from the United States in the manner provided by law on the lodged charge only.

/s/ ROBERT S. DeMOULIN,
Special Inquiry Officer.

RSD:eg.

(Copy)

EXHIBIT B

U. S. Department of Justice
Board of Immigration Appeals

Jan. 20, 1956.

File: A5-468333.

In re: Jogindar Singh Clair a/k/a Hasin Brams.

In Deportation Proceedings

in Behalf of Respondent:

Boyd H. Reynolds, Attorney,
1014-8th Street,
Sacramento, California.

Charges:

Warrant: I & N Act—Entered without inspection.

Lodged: I & N Act—Act of 1924—No immigration visa.

Application: Suspension of deportation.

Detention Status: Released on bond.

This is an appeal from the order of the special inquiry officer finding the respondent deportable on

the ground that he was an immigrant without an immigration visa at the time of his entry on August 27, 1940, but granting voluntary departure.

The respondent is seeking suspension of deportation. This relief was denied by the special inquiry officer on two grounds. First, because the respondent came into the United States on an allied merchant vessel during the war, left his ship and did not engage in seaman service during the remainder of hostilities; and the second ground is that the respondent failed to show exceptional or extremely unusual hardship to anyone if he were deported.

Counsel takes issue with the second basis for denying suspension. Irrespective of this issue, on the first ground stated by the special inquiry officer we believe suspension of deportation is unwarranted.

Order: It is ordered that the appeal be dismissed.

CHAIRMAN.

[Endorsed]: Filed April 25, 1957.

[Title of District Court and Cause.]

ANSWER

Comes now the Defendant Bruce G. Barber, District Director, Immigration and Naturalization Service, San Francisco, and answers the complaint herein as follows:

I.

Defendant admits the allegations of Paragraphs I, II, III, and IV of the complaint.

II.

Defendant alleges that the Board of Immigration Appeals has found not only that the plaintiff was not entitled to suspension of deportation on the grounds that he came into the United States on an allied merchant vessel during the war, that he left his ship and did not engage in seaman service during the remainder of hostilities, but also that he had failed to show exceptional or extreme hardship to anyone if he were deported.

III.

The defendant denies the allegations of Paragraph VIII and affirms that the proceedings in all respects were fair and constituted due process of law; that the findings were supported by substantial evidence; that the determinations were neither arbitrary nor unreasonable; and that the order of the agency was in accordance with statutory provisions and warranted by the facts.

Wherefore, the defendant prays that judgment be entered on behalf of the defendant and that he be granted his costs herein.

LLOYD H. BURKE,
United States Attorney,

By /s/ JAMES W. GRANT,
Special Assistant United
States Attorney.

A copy of the foregoing Answer was mailed this date to Robert B. McMillan, Esq., 625 Market Street, San Francisco, California, attorney for plaintiff.

Dated: May —, 1957.

/s/ JAMES W. GRANT.

[Endorsed]: Filed May 17, 1957.

[Title of District Court and Cause.]

NOTICE OF MOTION

To: Plaintiff Jogindar Singh Clair and Messrs. Phelan and Simmons, Mills Tower, San Francisco, California, attorneys for plaintiff.

Please take notice that on August 26, 1957, before Master Calendar Judge Louis E. Goodman, Room 258, United States Post Office and Courthouse Building, Seventh and Mission Streets, San Francisco, California, at the hour of 9:30 a.m., or as soon thereafter as counsel may be heard, defendant herein will move the Court to submit the administrative action of defendant for review upon Complaint herein, the Answer of the defendant and the certified record of administrative proceedings of the Immigration and Naturalization Service.

Dated: August 20, 1957.

LLOYD H. BURKE,

United States Attorney,

By /s/ CHARLES ELMER COLLETT,
Assistant U. S. Attorney.

A copy of the foregoing Notice of Motion was mailed this date to Messrs. Phelan and Simmons, Mills Tower, San Francisco, California, attorneys for plaintiff.

Dated: August 20, 1957.

CHARLES ELMER COLLETT,
Assistant U. S. Attorney.

[Endorsed]: Filed Aug. 20, 1957.

[Title of District Court and Cause.]

MINUTE ORDER—AUG. 30, 1957

This case came on regularly this day for submission. Ordered case continued to September 20, 1957, for submission.

[Title of District Court and Cause.]

MINUTE ORDER—SEPT. 20, 1957,

This case came on regularly this day for submission. Ordered case submitted on administrative record.

[Title of District Court and Cause.]

MEMORANDUM FOR JUDGMENT

Jogindar Singh Clair, hereinafter Clair, a citizen of India but a resident of the United States since

1940, has been found deportable on the ground that he was an immigrant without a visa at the time of his entry into the United States. In the course of his hearing, he applied for a suspension of deportation under Section 244 of the Immigration and Nationality Act of 1952, 8 U.S.C. 1254(a)(1), but suspension was denied. Noting that Clair had entered the United States at Norfolk, Virginia, in 1940 after arriving there as a seaman aboard a British Flagship, the Special Inquiry Officer placed his denial on these grounds:

“It is to be noted that the respondent deserted an allied ship during a period when the United States was endeavoring to aid Great Britain during World War II and when every available seaman was sorely needed. The respondent has no close relatives in the United States, furthermore, he has presented no evidence which would show that deportation in his case would result in exceptional or extremely unusual hardship to anyone.”

Taking his case to the Board of Immigration Appeals, Clair contended that the evidence did not support the conclusion that there would be no unusual hardship; the Board ignored this contention however, ruling that the denial of relief could be upheld upon the first ground stated by the Special Inquiry Officer, paraphrased thusly:

“* * * the respondent came into the United States on an allied merchant vessel during the

war, left his ship and did not engage in seaman service during the remainder of hostilities;”

Clair then filed this action under Section 10 of the Administrative Procedure Act, 5 U.S.C. 1009, contending that the ground relied upon by the Board was arbitrary, capricious, and an abuse of discretion; he asks that the order of deportation be set aside and that it be declared that he has a right to have his application for suspension be determined without reference to the fact that he arrived in the United States aboard a vessel of British registry.

The defendant answered, the matter was argued, and a certified copy of the administrative proceedings having been placed in the record, the matter was submitted to the Court for decision.

Much of plaintiff's argument endeavoring to show that the special hearing Officer and the Board were arbitrary is untenable. It is urged, for example, that the Board of Immigration Appeals, in saying that Clair came here on an "allied vessel during the war" is grossly in error, because the United States was not at war in 1940, and had no allies then. It is also assumed that the ground of refusal was only that Clair arrived here on a British vessel, instead of a ship of any other country. The Court has ignored all of this, for it is superficial and tenuous argument. The only point which concerns the Court is whether the Special Inquiry Officer and the Board were arbitrary in denying suspension of deportation to an alien because he deserted an allied vessel in 1940 and

did not engage in seaman service during the remainder of hostilities.

We are in an area where broad discretion has been conferred upon the administrative body. The statute says that "the Attorney General (of whom the Special Inquiry Officer and Board of Immigration Appeals are delegates) may, in his discretion, suspend deportation * * * "if the alien meets certain other requirements. (Emphasis added.) In *Jay v. Boyd*, 351 U. S. 345 (1956), this discretion was discussed. The Court said:

"It (the statute) does not restrict the considerations which may be relied upon or the procedure by which the discretion should be exercised. Although such aliens have been given a right to a discretionary determination on an application for suspension, cf. *Accardi v. Shaughnessy* 347 U. S. 260, a grant thereof is manifestly not a matter of right under any circumstances, but rather is in all cases a matter of grace. Like probation or suspension of criminal sentence, it 'comes as an act of grace,' *Escoe v. Zerbst*, 295 U. S. 490, 492, and 'cannot be demanded as a right,' *Berman v. United States*, 302 U. S. 211, 213. And this unfettered discretion of the Attorney General with respect to suspension of deportation is analogous to the Board of Parole's powers to release federal prisoners on parole."

Congress having bestowed upon the Attorney General a grant of "unfettered" power, to be exercised

on the basis of such considerations as his sound discretion may dictate, it follows that only a very narrow scope of review is left to the Courts. It is not enough that the considerations or criteria employed by him or his delegates do not conclusively prove that the alien is undersirable; the question for the reviewing court is only whether the considerations used are palpably irrelevant or arbitrary. As declared by Judge Hand in *U. S., ex rel., Kaloudis v. Shaughnessy*, 2d Cir. 1950, 180 F. 2d 489, "The power of the Attorney General to suspend deportation * * * is a matter of grace, over which courts have now review, unless—as we are assuming—it affirmatively appears that the denial has been actuated by considerations that Congress could not have intended to make relevant." " * * * unless the ground stated is on its face insufficient, he must accept the decision, for it was made in the 'exercise of discretion,' which we have again and again declared that we will not review."

In the case at bar, the Court is unable to state that the Attorney General abused his discretion in denying suspension on the ground, among others, that the alien deserted a British ship in 1940, and did not engage in seaman service during the remainder of hostilities. The plaintiff has placed much reliance upon the case of *Mastrapasqua v. Shaughnessy*, 2d Cir., 1950, 180 F. 2d 999, where it was held to be an abuse of discretion to categorically deny suspension to all aliens whose presence in the United States was due solely to reasons connected

with the war. There is a substantial difference between that reason and the one given here. Here the reason for the denial is the activity of the alien in 1940 and through to 1945; here the Attorney General, in determining who should be the beneficiary of the sovereign grace, has decided not to dispense his power in favor of one who has demonstrated lack of sympathy for the cause espoused by the sovereign during World War II. Plainly, this reason cannot be said to be arbitrary or patently irrelevant.

Judgment is awarded to defendant. Counsel for defendant is directed to prepare and present findings, conclusions and a judgment in accordance herewith.

Dated: October 28, 1957.

/s/ OLIVER J. CARTER,
United States District Judge.

[Endorsed]: Filed Oct. 28, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above action having come on regularly for hearing before the Honorable Oliver J. Carter, Judge of the above-entitled Court, Phelan and Simmons, attorneys-at-law appearing for plaintiff, and Lloyd H. Burke, United States Attorney, and Charles Elmer Collett, Assistant United States Attorney

appearing for defendant, and the Court having on October 28, 1957, filed its Memorandum for Judgment therewith, does hereby make the following.

Findings of Fact and Conclusions of Law

I.

Plaintiff by his complaint seeks judicial review of the administrative proceedings as related to his application for suspension of deportation.

II.

Plaintiff entered the United States in 1940 as a seaman on shore leave. He was not in possession of a valid immigration visa.

III.

Plaintiff failed to depart from the United States in accordance with the conditions of his shore leave, but instead, deserted his ship and remained in the United States illegally.

IV.

Plaintiff has been found deportable on the ground that he is an immigrant not in possession of a valid unexpired immigration visa (Section 13 (a) 1924 Act) and therefore within one of the classes excludable by law at the time of entry (Sec. 241 (a) (1) 1952 Act).

V.

Plaintiff following his desertion and illegal entry did not engage in seaman service during World War II.

VI.

During the administrative proceedings plaintiff made application for suspension of deportation under Sec. 244 of the 1952 Act.

VII.

Plaintiff was at all times afforded due process and a fair hearing. In the exercise of the discretion vested in the Attorney General of the United States and delegated by regulation to the defendant and the Board of Immigration Appeals, the application for suspension of deportation was denied.

VIII.

In the disposition of plaintiff's application for suspension of deportation, defendant and the Board of Immigration Appeals have lawfully exercised the discretion contained in Sec. 244 of the 1952 Act.

Conclusions of Law

I.

Plaintiff is an alien illegally in the United States.

II.

The Order of defendant that plaintiff be deported is valid and legal.

III.

The denial of plaintiff's application for suspension is a valid exercise of the discretion contained in Section 244 of the Immigration and Naturalization Act of 1952.

IV.

Plaintiff is entitled to nothing by his complaint.

V.

Defendant is entitled to judgment dismissing the complaint and action and for his costs of suit.

Let judgment be entered accordingly.

Dated: November 29, 1957.

/s/ OLIVER J. CARTER,

United States District Judge.

A copy of the foregoing proposed Findings of Fact and Conclusions of Law was mailed this 7th day of November, 1957, to Robert B. McMillan, Esq., 625 Market Street, San Francisco, and to Phelan & Simmons, 1210 Mills Tower, San Francisco 4, California, as attorneys for plaintiff.

/s/ CHARLES ELMER COLLETT,

Assistant United States Attorney.

[Endorsed]: Filed Nov. 29, 1957.

In the United States District Court for the Northern
District of California, Southern Division

Civil No. 36388

JOGINDAR SING CLAIR,

Plaintiff,

vs.

BRUCE G. BARBER as District Director, Immi-
gration and Naturalization Service, San Fran-
cisco District,

Defendants.

JUDGMENT

The above matter having been heard by the Hon-
orable Oliver J. Carter, Judge of the above-entitled
Court, and the Court in accordance with its Memo-
randum for Judgment, filed October 28, 1957, hav-
ing also filed its Findings of Fact and Conclusions
of Law, now, therefore,

It is Hereby Ordered, Adjudged and Decreed that
plaintiff is entitled to no relief by his complaint
herein, and said complaint and action are hereby
dismissed; defendant to have judgment for his costs
in the sum of \$20.00.

Dated: November 29, 1957.

/s/ OLIVER J. CARTER,

United States District Judge.

A copy of the foregoing proposed Judgment was
mailed this date to Robert B. McMillan, Esq., 625

Market Street, San Francisco, California, and to Phelan & Simmons, 1210 Mills Tower, San Francisco 4, California, as attorneys for plaintiff.

Dated: November 29, 1957.

CHARLES ELMER COLLETT,
Assistant United States At-
torney.

Lodged Nov. 7, 1957.

[Endorsed]: Filed Nov. 29, 1957.

Entered: Nov. 29, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Jogindar Singh Clair, plaintiff herein, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment in the above-entitled action against plaintiff and in favor of defendant which said judgment was entered in this action on November 29, 1957.

Dated: December 10, 1957.

ROBERT B. McMILLAN,
PHELAN & SIMMONS,
Attorneys for Plaintiff.

By /s/ ARTHUR J. PHELAN.

Certificate of Service attached.

[Endorsed]: Filed Dec. 10, 1957.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Whereas, the Plaintiff has appealed to the United States Court of Appeals for the Ninth Circuit from the judgment of this court entered

Now, Therefore, in consideration of the premises and of such appeal, the undersigned, Maryland Casualty Company, a corporation duly organized and existing under the laws of the State of Maryland, and duly authorized to transact a general surety business in the State of California, does undertake and promises on the part of the Plaintiff, to secure the payment of costs if the appeal is dismissed, or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, not exceeding the sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is expressly agreed by the Surety that in case of a breach of any condition hereof, the above-entitled Court, may proceed summarily in the above-entitled action in which this bond is given, to ascertain the amount which the Surety is bound to pay on account of such breach and render judgment therefor against the Surety and award execution therefor, all as provided by and in accordance with the intent and meaning of Section 73C of the Federal Rules of Civil Procedure.

In Witness Whereof, the corporate seal and name of the said Surety Company is hereto affixed and

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

Jogindar Singh Clair, plaintiff herein, designates the portions of the record, proceedings, and evidence to be contained in the record of appeal, as follows:

1. Complaint (including the exhibits thereto and made a part thereof);
2. Answer;
3. Defendant's Notice of Motion, dated August 20, 1957;
4. Minute Order of August 30, 1957, re Submission of Cause;
5. Minute Order of September 20, 1957, re Submission of Cause;
6. Memorandum for Judgment filed October 28, 1957;
7. Findings of Fact and Conclusions of Law;
8. Judgment;
9. Notice of Appeal;
10. Designation of Contents of Record on Appeal.
11. Certified Immigration Record.

Dated: December 20, 1957.

ROBERT B. McMILLAN,
PHELAN & SIMMONS,
Attorneys for Plaintiff;

By /s/ ARTHUR J. PHELAN.

Service admitted.

[Endorsed]: Filed Dec. 20, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by counsel for the appellant:

Excerpt from Docket Entries.

Complaint.

Answer.

Notice of Motion to Submit Case on Administrative Record.

Minute Order Continuing Case for Submission.

Minute Order Submitting Case.

Memorandum for Judgment.

Findings of Fact and Conclusions of Law.

Judgment.

Notice of Appeal.

Appeal Bond.

Designation of Record on Appeal.

Defendant's Exhibit A—Certified Record from Immigration and Naturalization Service.

In the United States Court of Appeals
for the Ninth Circuit

No. 15841

JOGINDAR SINGH CLAIR,

Appellant,

vs.

BRUCE G. BARBER, as District Director of Im-
migration and Naturalization Service, San
Francisco District,

Appellee.

APPELLANT'S STATEMENT OF POINTS
ON APPEAL

Appellant, through his undersigned attorneys, submits the following statement of points on which he intends to rely on appeal in this cause:

I.

The District Court erred in holding that the administrative denial of appellant's application for suspension of deportation was a valid exercise of the discretion contained in section 244 of the Immigration and Nationality Act (8 U.S.C. 1254).

II.

The District Court erred in holding that appellant was afforded due process and a fair hearing on his application for suspension of deportation.

III.

The District Court erred in holding that appellee and the Board of Immigration Appeals lawfully

exercised their discretion in denying appellant's application for suspension of deportation on the sole ground that appellant came into the United States on an allied merchant vessel during the war, left his ship, and did not engage in seaman service during the remainder of hostilities.

IV.

The District Court erred in entering judgment that the complaint and action be dismissed.

Dated: January 16, 1958.

ROBERT B. McMILLAN,
PHELAN & SIMMONS,
Attorneys for Appellant;

By /s/ ARTHUR J. PHELAN.

Copies mailed.

[Endorsed]: Filed Jan. 16, 1958.

